



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of : Captain Les Albiol, USAFM

File: B-257580

Date: December 27, 1994

DIGEST

Where member is resident curator of state historical site and has agreed to restore site with own funds in exchange for right to reside at site, such expenses are properly considered "monthly housing costs" for calculation of Variable Housing Allowance under 37 U.S.C. § 403a.

DECISION

Captain Les Albiol has submitted a claim seeking reinstatement of a full Variable Housing Allowance (VHA) pursuant to his and his wife's contract with the state of Maryland as curators of the Alfred Brown House and Mill Site.

Captain Albiol was receiving the full VHA of \$447.54 until September 28, 1993, when he undertook the curatorship of the Brown House. At that time, since he no longer reported any monthly rental expense his allowance was reduced.

The state of Maryland has a resident-curatorship program whereby individuals agree to donate goods and services to restore a historic property in exchange for the right to live in the property, normally rent-free for the life of the curators. Here, the Albiols have agreed to expend at least \$120,000 over the 5 five years of the curatorship to restore the Brown House in exchange for the right to reside there. After the initial restoration, the curators agree to maintain the property and to open it to the public for 3 to 5 days each year.

In the instant case, the Albiols expended \$24,253.35 in out-of-pocket expenses and \$18,725 in personal labor during 1993 in restoring the property. Such expenses, under the terms of the curatorship, constitute a donation to the state of Maryland.

Captain Albiol contends that while he is not renting or purchasing the house, the payments he is making under the terms of his curatorship should qualify as housing costs and entitle him to a VHA.

A VHA, authorized by 37 U.S.C. 403a, is paid to a service member who is entitled to a basic allowance for quarters (BAQ) if he or she is assigned to duty in a high cost housing area of the United States. Since an amendment to the statute in 1985, a member's actual "monthly housing costs" are considered in determining the amount of the VHA he or she receives.

Under paragraphs U8001E and F of the Joint Federal Travel Regulations, the allowable costs for rental expenses and ownership expenses, respectively, are listed. Rental expenses include the rent payment, liability and personal property insurance plus the standard utility/maintenance expense delineated in paragraph U8001G. Allowable ownership expenses include periodic mortgage payments, hazard and liability insurance and real estate taxes plus certain types of second mortgages, home equity loans and personal loans if the loans are used to repair, renovate or enlarge the residence.



While Captain Albiol is neither renting nor purchasing the residence where he is residing but rather improving and restoring it as a condition of his curatorship, an uncommon arrangement not covered by the regulations, we do not find that the failure of the regulations to cover these circumstances should preclude his use of these costs in computing his VHA. The costs he incurred for 1993, cited above, were his "housing costs," though not on a monthly basis.

In prior decisions, we have disallowed certain types of costs which were not listed in the JFTR. In 68 Comp. Gen. 106 (1988), we concluded that a member who had paid cash for his house could not prorate the cost since the allowance is intended to be attuned to the member's actual housing costs and since he had no actual out-of-pocket housing expense, he did not qualify for the allowance. Likewise, in 67 Comp. Gen. 578 (1988), we disallowed the inclusion of "opportunity costs" in the calculation of VHA where a member who paid cash for a residence wanted to include the interest or return on investment they calculated he lost each month if he had invested it and taken out a mortgage. Similarly, in 67 Comp. Gen. 145 (1987), we did not permit the expenses of certain second mortgages which were taken for purposes other than renovating or repairing the residence.

In these cases, the members were not incurring monthly expenses or spending monies to secure or maintain a residence, as Captain Albiol is doing in the instant case. Accordingly, we find that Captain Albiol may include his out-of-pocket expenses in the calculation of his VHA.

While the Albiols' total housing expenses are not known until the end of a year, a yearly expense may be prorated over the course of the year as shown in example 5 in paragraph U8003 of the JFTR (involving a yearly property tax) to compute the allowable VHA.

As regards the Albiols' personal labor, i.e., "sweat equity", we find that this is not a proper item for inclusion in the computation of VHA since it is not a "cost" and is too difficult to properly estimate.


 Robert P. Murphy
General Counsel